IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5454 of 2006 (O&M)
Date of decision : 14.12.2006

National Insurance Company Limited

....Appellant

Versus

Gurbachan Singh & others

...Respondents

CORAM : HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.L.M.Suri, Sr. Advocate with
Ms. Karnica Bhurjee, Advocate
for the appellant.

...

ADARSH KUMAR GOEL,J.(O)

This appeal has been preferred by the insurance company against the award of the Tribunal awarding a sum of Rs.4,19,000/- on account of death of Inderjeet Singh.

Case of the claimants is that on 5.7.2003, at 5.40 p.m., the deceased was travelling on a scooter from Sirsa to Ding. He was hit by vehicle driven rashly and negligently by Mange Lal resulting in death of Inderjit Singh and injuries to Gurbachan Singh claimant, son of the deceased. The driver ran away. The deceased was medically examined and treated for about 40 days in different hospitals and finally died, on account of injuries suffered, on 14.8.2003. Post mortem examination was conducted and FIR dated 14.8.2003 was

lodged.

The driver and owner of the vehicle as well as the insurance company contested the claim.

Following issues were framed :

1. Whether the accident in question had taken place due to rash and negligent driving of Truck-Trolla No.HR-38E/9871 resulting into the death of Inderjeet Singh as alleged? OPP
2. Whether the petitioners are entitled to receive any compensation amount? If so, how much and from whom? OPP
3. Whether the petitioner have no cause of action to file the present petition?OPR
4. Whether the claim petition is bad for mis-joinder of parties and non-joinder of necessary parties? OPR
5. Whether the petitioners have no locus standi to file the present petition? OPR
6. Whether the claim petition is not maintainable? OPR
7. Whether respondent No.1 was not holding a valid and effective driving licence to drive a truck at the time of alleged accident? If so, to what effect? OPR
8. Relief.

The claimants examined Gurbachan Singh, PW3, Dr.S.C.Manchanda,PW1, Dr.V.K.Gupta, PW2 and placed on record documents Exs.PA to PZ/3.

The Tribunal held that evidence of PW3 Gurbachan

Singh was reliable and could not be rejected merely on the ground that there was delay in lodging the FIR and that registration number of the offending vehicle given in the FIR was wrong. The driver had already been charge sheeted vide Ex.PE.

As regards the quantum of compensation, it was found that deceased was 50 years of age as per post-mortem report Ex.PK, was a transporter by profession, and was the owner of a truck as proved by Ex.PQ, copy of registration certificate of truck No.HRE-2411, he was also owner of truck No.HR-20-7785 as shown by Ex.PS. As per income tax return Ex.PZ for the assessment year 2003-2004 the deceased had paid tax of Rs.1,176/-, but did not pay tax for the assessment year 2004-2005. During the assessment year 2002-2003 his income was Rs.48,663/- while during the assessment year 2003-2004 his income was Rs.4,66,755/-. The Tribunal assessed his income as Rs.75,000/- and deducting his own expenses being 1/3rd of the said income, the annual dependency was worked out to be Rs.50,000/- and multiplier of eight was applied. Taking into account expenses on medical treatment and transportation and cremation, total sum of Rs.4,19,000/- was awarded.

Learned counsel for the appellant submitted that sole testimony of PW3 Gurbachan Singh could not have been relied upon having regard to delay in lodging the FIR and having regard to the fact that wrong number of the truck was mentioned. He also submitted that deduction of 1/3rd for personal expenses was not permissible as the deceased was survived only by his son who was aged 20 years and in fact there was no loss as the income was from

the trucks which were still available. He has further submitted that there was no basis for assessment of Rs.75,000/- as annual income of the deceased when the only evidence brought before the Tribunal was income-tax returns showing much lesser amount.

We are unable to accept the submissions made. The evidence of claimant, who is son of the deceased, has been believed by cogent reasons. It was held that mere delay in lodging the FIR or mention of wrong number in FIR did not affect his veracity. PW3 Gurbachan Singh has duly explained the delay in lodging the FIR since he was busy in the treatment of his father who died after 40 days of the accident and FIR was lodged on the same day i.e. when the victim died. In affidavit Ex.PG, which was proved in his evidence ,he mentioned the income to be Rs.15,000/- to Rs.20,000/- per month. While assessing income of deceased, some amount of guess work has to be allowed and having regard to the fact that the deceased had two trucks, assessment of income of Rs.75,000/- cannot be held to be arbitrary. Income disclosed in the previous years in the returns , even though relevant, cannot be treated as conclusive for the purpose of assessment by the Tribunal. Even if the version of PW3 Gurbachan Singh may be exaggerated, assessment by the Tribunal of the income of the deceased being Rs.75,000/- per annum at the time of his death cannot be held to be excessive.

In view of the above, we affirm the findings of the Tribunal that the death of Inderjeet Singh took place on account of rash and negligent driving of the driver of the truck and hold that the compensation of Rs.4,19,000/-, as determined by the Tribunal, is not

excessive.

The appeal is dismissed.

(MAHESH GROVER)
JUDGE

(ADARSH KUMAR GOEL)
JUDGE

December 14, 2006

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